

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATIONAL PASTEURIZED EGGS, INC.
and NATIONAL PASTEURIZED EGGS, LLC,

Plaintiffs,

v.

ORDER

10-cv-646-wmc

MICHAEL FOODS, INC., ABBOTSFORD
FARMS, INC., CRYSTAL FARMS
REFRIGERATED DISTRIBUTION COMPANY,
and M.G. WALDBAUM COMPANY,

Defendants,

and

MICHAEL FOODS, INC.,

Plaintiff,

v.

11-cv-534-wmc

NATIONAL PASTEURIZED EGGS, INC.,

Defendant.

Having reviewed the parties' deposition designations and objections thereto, the court makes the following rulings. The approved designations may be presented to the jury unless the witness is available to testify in person.

1) Leon John Davidson, Apr. 6, 2012 (dkt. #277):

MFI Initial Designations	National Objections	National Counterdesignations	MFI Counterobjections	Court's Ruling
7:1-7:2 7:5-7		(See National Initial Designations)		

MFI Initial Designations	National Objections	National Counterdesignations	MFI Counterobjections	Court's Ruling
9:14-21		(See National Initial Designations)		
10:25-11:2 11:17-19		12:6-13:5 (See National Initial Designations)		
32:20-33:2		(See National Initial Designations)		
33:20-34:6 34:10-15		34:16-35:17 (See National Initial Designations)		
35:18-22		(See National Initial Designations)		
37:1-38:8 42:2-9		39:6-42:1 42:10-13 44:2-10 (See National Initial Designations)		
44:11-16		(See National Initial Designations)		
44:20-45:2		45:3-4 (See National Initial Designations)		
45:10-13 46:2-12 46:16-47:16		(See National Initial Designations)		
47:17-47:20 48:1-3 51:22-52:5		47:21-25 52:6-7 52:21-53:8 (See National Initial Designations)		
53:9-14 53:25-54:9		(See National Initial Designations)		
76:1-7	R; 403; MIL (to the extent played in the liability phase)	75:16-25 (See National Initial Designations)		Sustained as to liability; overruled as to damages
77:23-78:3	R; 403; MIL (to the extent played in the liability phase)	(See National Initial Designations)		Sustained as to liability; overruled as to damages
79:3-5		(See National Initial Designations)		
80:10-80:15	R; 403; MIL (to the extent	80:20-21 (See National Initial		Sustained as to liability; overruled

MFI Initial Designations	National Objections	National Counterdesignations	MFI Counterobjections	Court's Ruling
	played in the liability phase)	Designations)		as to damages
85:20-86:9	R; 403; MIL (to the extent played in the liability phase)	(See National Initial Designations)		Sustained as to liability; overruled as to damages
86:13-17	R; 403; L; MIL (to the extent played in the liability phase)	(See National Initial Designations)		Sustained as to liability; overruled as to damages
97:13-25	R; 403; MIL; HS	(See National Initial Designations)		Sustained; omit 97:13-15
99:7-101:12 101:20-25	R; 403	(See National Initial Designations)		Overruled
102:1-11 103:17-25 104:25-105:6	Untimely	102:12-103:6 105:7-12 (See National Initial Designations)		Overruled, provided counterdesignations included
105:13-18 106:1-21 107:2-17	R; 403	(See National Initial Designations)		Overruled
112:19-113:3 113:11-16 114:9-17 116:18-24 116:25-118:4 118:14-119:23	Untimely (112:25-113:3, 113:11-16, 114:9-17, 116:25-118:4, 118:14-119:23)	112:25-113:23 (See National Initial Designations)		Overruled, provided counterdesignations included
120:11-121:7	AC (121:6)	(See National Initial Designations)		Sustained; omit 121:6
121:15-21	Untimely; AC (121:19-20)	(See National Initial Designations)		Sustained; omit 121:19-20
122:5-10		(See National Initial Designations)		
135:9-10		(See National Initial Designations)		
138:2-140:3		(See National Initial Designations)		

National Initial Designations	MFI Objections	MFI Counter-designations	NPE Counter-objections	Court's Ruling
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National Initial Designations	MFI Objections	MFI Counter-designations	NPE Counter-objections	Court's Ruling
7:5-7:9				
9:14-9:21				
10:1-10:14				
14:2-15:6				
15:21-16:5				
17:21-18:6				
29:7-29:24				
30:2-30:21				
32:3-32:12				
37:1-37:7				
37:22- 38:2				
42:2-44:6				
49:1-49:7				
50:1-50:5				
140:13-140:16				
141:2-141:25				
144:20-145:9				
147:3-147:20				
148:9-148:21	Rule 602, Lack of foundation (148:18-21)			Overruled
149:12-150:13	Rule 602, Lack of foundation (149:15-16)			Overruled
152:17-154:15				
155:13-156:15				
157:9-158:24				
159:2-161:12				
162:22-163:4				
163:7-163:24				
164:2-164:6				
164:8-164:9				
165:11-166:21				
166:24-167:12				
168:12-168:18				
168:21-168:24				
169:1-170:12				
170:25-173:10				
173:17-174:10	Assumes facts not in evidence (174:7-10)			Sustained; omit 174:7-14 through "words" (keep "Would you read the sentence again?) and omit 174-15-17
174:13-175:3	Assumes facts not in evidence			Overruled

National Initial Designations	MFI Objections	MFI Counter-designations	NPE Counter-objections	Court's Ruling
	(175:1-3)			
175:5-176:23				
177:1-177:4				
177:7-177:8				
177:24-178:4				
178:17-181:21				
181:24-182:6		182:7-12; 182:15-19	Rule 402; Untimely	Overruled as to 182:7-12; sustained as to 182:15-19; omit 182:15-19
183:5-185:20				
186:1-186:24				
187:2-187:10		187:11-16		
187:18-188:4				
188:23-189:21				
193:13-195:5				
195:10-195:12 (ending at "doubt.")		195:13-196:4		
196:5-196:16				
198:7-199:6				
199:9-199:18				
199:20-199:25				
200:2-200:5				
200:7-200:12	Rule 402, Lack of foundation (200:10-12)			Overruled
200:15-201:1	Rule 402, Lack of foundation (200:17-19)			Overruled in part; sustained in part; omit 200:17
201:4-201:6		201:7-9	Untimely	Overruled
201:10-201:14	Rule 402, Lack of foundation			Overruled
201:17-201:24	Rule 402, Lack of foundation			Overruled
220:22-221:3				

2) James D. Schuman, PhD., Dec. 1, 2011 (dkt. #148):

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
6:2-6:4				
6:9-6:15		16:7-8		

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
44:2-44:23	Rule 402, Rule 403 (44:2-23)	42:17-43:8	Untimely	Overruled as to both objections
67:8-67:23		66:20-67:7; 67:24-68:8	Untimely	Overruled
71:21-73:18, 73:22-74:14				
75:7-76:17				
82:22-83:15		80:3-80:18		
86:17-86:22		87:4-9		
88:20-90:7		90:8-22	Untimely	Overruled
91:7-91:21				
92:6-93:1				
93:2-93:18		93:23-94:1	Untimely	Overruled
106:11-106:22				
108:16-109:12				
115:2-115:14				
115:18-116:3				
118:5-120:6	Attorney colloquy (118:7-8)			Sustained in part; overruled in part; omit 118:7
129:17-129:19 129:22-130:9	Rule 602, Lack of foundation (129:17-19)			Overruled
145:18-145:20				
146:3-146:19				
193:5-193:8				
193:24-194:12				
195:18-195:21				
199:12-199:20				
202:3-202:5				
204:15-204:20				
205:7-205:10				
205:21-206:1, 206:4-206:13				
207:13-207:23,				

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
208:1-208:23				
212:11-213:3		213:4-13		
218:18-219:7				
223:24-224:10				
225:16-226:10		226:11-14		
226:15-229:12		229:13-230:8		
230:9-233:17		233:18-25; 234:3-12		
234:13-235:4				
236:16-236:19, 236:21-237:16				
237:21-237:23, 238:2-238:3				
240:19-241:13, 241:16-241:23, 242:3-242:4, 242:8-242:13, 242:17-242:20	Assumes facts not in evidence (241:11-13); Rule 402, Rule 403 (241:22-23; 242:3-4; 242:8-13; 242:18-20)			Overruled in part; sustained in part; omit 241:22-242:20
243:13-243:23				
245:6-246:3, 246:5-246:16				
247:21-248:2				
248:5-248:9				
248:17-249:8	Attorney colloquy (249:6-7)			Sustained; omit 249:6-7
249:13-250:19				
253:10-253:23, 254:2-254:6				
247:21-248:2				
248:5-248:9				
248:17-249:8				
249:13-		250:20-251:1	Untimely	Overruled

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
250:19				
253:10-253:23, 254:2-254:6				
256:14-257:6				
257:10-258:16				
261:4-261:11		261:12-23		
262:4-262:13				
262:23-263:18, 263:22-264:6		270:2-271:7; 272:6-9; 272:11-17		
273:16-273:18, 273:23-274:2	Rule 402, Rule 403			Sustained; omit 273:16-18, 273:23-274:2

3) Dr. Hershall Ball, Mar. 20, 2012 (dkt. #275):

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
15:16-15:19				
15:25-16:5				
18:3-18:6				
18:11-18:19		18:20-19:2		
19:3-19:7		19:19-23		
19:24-20:9				
26:8-26:16				
28:18-28:23				
29:13-29:23				
30:6-30:19		34:1-6; 35:13-24		
36:20-37:8				
37:14-37:18		37:19-25		
52:14-52:19		35:25-36:7; 46:14-16; 46:18-20; 49:19-22		
54:4-55:7		55:8-18		
58:24-59:5				
59:15-60:2				
60:3-60:7				
74:8-74:14				
74:24-75:10				

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
75:17-76:2, 76:7-76:12				
76:21-76:22, 77:3-77:8	Rule 402, Rule 403			Sustained; omit 76:21-22, 77:3-8
78:11-78:15, 78:20-78:25				
79:8-79:11	Rule 402, Rule 403			Sustained; omit 79:8-11
79:21-79:25		79:17-20	Untimely	Overruled
82:16-82:20		83:17-21		
84:6-84:14		84:15-17; 84:20-21		
86:9-86:14				
88:18-89:14		90:20-25		
96:6-96:11				
97:1-97:8, 97:11				
100:2-100:10				
101:1-101:16		101:17-22		
101:23-102:12		103:12-104:1		
104:20-105:8				
106:5-106:12				
109:21-110:2				
111:12-112:12				
113:18-113:23				
115:11-115:17				
124:13-125:16				
129:13-129:20				
131:4-131:12		131:13-16		
132:5-132:10				
132:21-133:5, 133:8-133:9				
140:18-140:23				
141:18-141:25		142:1-2		
142:3-142:5, 142:8-142:9		142:19-22; 142:25-143:10; 143:12-14;		

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
		144:2-18		
182:16-183:8, 183:11-184:6	Rule 602, Lack of foundation (183:8)	184:20-22; 184:24-25		Overruled
189:4-189:25, 190:3-190:5				
191:11-191:18, 191:21-191:23	Vague (191:11-18)			Overruled
200:12-200:22				
201:7-201:14				
203:17-205:3				
205:10-205:20				
207:1-207:24, 208:2-208:14				
214:15-214:24, 215:2-215:4	Vague, Rule 602, Lack of foundation (214:21-24)	222:3-5; 222:8-10	Incomplete	Overruled as to both objections
232:15-233:20				
234:3-234:11				
234:17-234:20				
235:1-236:9		236:10-14		
236:15-238:22				
240:1-242:9		294:2-14; 294:16-20; 294:23	AC (294:11-12)	Sustained; omit 294:11-12
243:5-243:23, 244:1-245:8		294:25-295:11; 295:14; 295:16-17; 295:20-21; 295:23-296:7		
246:4-246:21		296:16-17; 296:20; 296:22-297:1; 297:4		
249:16-249:21, 249:24-250:11		249:23		
250:23-				

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
251:15, 251:17- 251:21				
254:17- 254:20, 254:25- 255:11		255:12-17; 255:20-23		
255:25-256:2, 256:5-256:7		257:9-11; 257:14-15; 257:17-258:1		
258:2-258:7, 258:9-258:13				
258:18- 258:25, 259:2-259:5				
259:14-262:7, 262:10- 262:16				
263:10-264:2, 264:6-264:14		264:16-19; 264:23		
264:25-265:6				
272:18- 273:16				
273:23-274:4				
274:23- 275:13				
275:20- 276:11, 276:14- 276:24	Rule 602, Lack of foundation (276:8-11)			Sustained; omit 275:20-276:11, 276:14-24
277:13- 278:10				
279:3-279:10				
280:2-281:2				
281:13-282:5				
282:13- 282:18, 282:21				
283:2-283:10				
287:1-287:7				
287:16- 287:21, 287:23- 287:25				

4) Joseph M. Vandepopuliere, Ph.D., Apr. 10, 2012 (dkt. #266):

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
7:7-8:10				
13:14-13:15				
13:17				
13:19-13:23				
14:14-14:17				
15:9				
15:12-17:7				
17:9-17:10				
19:21-20:21				
34:15-34:21				
34:25-35:2				
34:25-35:2				
35:8-35:12				
35:18-35:25				
42:5-42:13				
45:1-46:1				
46:19-48:19	Rule 402, Rule 403 (47:23-49:10)			Sustained; omit 47:23-49:10
48:22-48:25	Rule 402, Rule 403 (47:23-49:10)			
49:2-49:7	Rule 402, Rule 403 (47:23-49:10)			
49:10-49:15	Rule 402, Rule 403 (47:23-49:10)			
49:18-49:19				
50:10-50:22	Rule 402, Rule 403			Sustained; omit 50:10-22
50:25-51:4	Rule 402, Rule 403			Sustained; omit 50:25-51:4
51:13-51:25				
52:3				
52:16-53:15				
53:22-54:3				
54:13-55:2	Rule 602, Lack of foundation (55:1-2, 6-8)			Sustained; omit 55:1-2

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
55:6-55:8	Rule 602, Lack of foundation (55:1-2, 6-8)			Sustained; omit 55:6-8
55:11	Rule 602, Lack of foundation			Sustained; omit 55-11
57:21-58:14	Rule 602, Lack of foundation (57:22-58:1)			Overruled
58:17-58:20	Rule 602, Lack of foundation (58:19-20)			Sustained; omit 58:19-20, 23
58:23-59:1				
59:3-59:13				
59:16-59:20				
59:23-60:14	Rule 602, Lack of foundation (60:13-14)			Sustained; omit 60:13-14
60:16-60:18	Rule 602, Lack of foundation (60:16-18)			Sustained; omit 60:16-18
60:21-61:12	Rule 602, Lack of foundation (60:23-61:1)			Overruled
61:14-61:21				
61:24-62:6				
62:9-64:7	Compound, Vague (64:4-7)			Sustained; omit 64:4-11
64:10-64:25				
65:2-66:8				
66:11-66:24				
67:2-68:2				
68:18-69:22				
69:24-70:25				
71:2-71:10				
71:13				
71:15-71:24				
72:24-73:20				
74:9-74:16	Compound (74:14-16; 74:19-24)			Overruled
74:18-74:24				
75:1-75:2				
78:9-79:17				

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
81:8-81:20				
82:4-82:12				
83:2-83:5		83:6-10		
84:4-84:6				
84:9				
86:13-87:16				
88:9-88:16				
89:12-90:13				
90:15-90:16				
90:25-91:3				
91:6-91:12				
91:15-91:23				
92:8-93:9				
93:11-96:1				
97:6-99:2				
99:14-100:4				
100:12- 100:13	Rule 602, Lack of Foundation			Sustained; omit 100:12-13, 16-17
100:16- 100:20				
101:2-102:3				
102:6-103:5				
103:9				
103:11- 103:21				
108:12- 108:20				
108:24- 108:25				
109:3-109:4				
109:13-110:2				
114:18- 115:13				
115:16- 115:21				
115:24				
116:1-116:3				
116:6-116:18				
116:20-117:1				
117:22- 117:25				
118:2				

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
118:5-118:6				
118:10-118:20				
118:23-119:9				
119:11-119:18				
119:20-119:21				
119:23-120:23				
120:25-121:2				
121:5				
121:8-121:14				
121:16-121:23				
121:25-122:11				
124:22-124:25				
125:2				
125:5-125:9				
125:12-125:13				
125:15-125:17				
125:19-126:2				
126:5-127:8				
127:11-127:14				
128:4-128:10				
130:13-131:1		131:4-8		
131:11-131:16				
131:18-131:19		131:21-132:2	AC (131:24-25)	Sustained; omit 131:24-25
132:24-133:16				
133:18-135:8	Rule 802, Rule 602	133:20		Overruled
135:11-135:16	Rule 802, Rule 602			Overruled
135:18-135:23	Rule 802, Rule 602			Overruled

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
135:25-136:3	Rule 802, Rule 602			Overruled
136:6-136:23	Rule 802, Rule 602			Overruled
137:1-137:7	Rule 802, Rule 602			Overruled
137:15-138:23	Rule 802, Rule 602			Overruled
139:1-139:11	Rule 802, Rule 602			Overruled
140:14-140:21	Rule 802, Rule 602			Overruled
140:25-141:2	Rule 802, Rule 602			Overruled
141:4-141:7	Rule 802, Rule 602			Overruled
141:9-141:19	Rule 802, Rule 602			Overruled
141:21-142:3	Rule 802, Rule 602			Overruled
142:6-142:11	Rule 802, Rule 602			Overruled
142:13-142:20	Rule 802, Rule 602			Overruled
143:1-143:8	Rule 802, Rule 602			Overruled
143:24-144:3	Rule 802, Rule 602			Overruled
144:5	Rule 802, Rule 602			Overruled
144:7-144:10	Rule 802, Rule 602			Overruled
144:13-144:18	Rule 802, Rule 602			Overruled
144:20-145:6	Rule 802, Rule 602	257:21-260:8 260:12-261:4; 262:7-15; 274:12-275:23; 276:3-24	Rule 402; Rule 403; Leading	Overruled as to both objections
145:10-145:23	Rule 802, Rule 602			Overruled
146:1-146:9	Rule 802, Rule 602			Overruled
146:11-146:15	Rule 802, Rule 602			Overruled

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
146:18-147:2	Rule 802, Rule 602			Overruled
147:4-147:6	Rule 802, Rule 602			Overruled
147:9-147:18	Rule 802, Rule 602 (147:9)			Overruled
147:21-148:5				
148:8-148:10				
148:12-148:13				
148:15-148:20	Rule 802, Rule 602			Overruled
148:23-149:12	Rule 802, Rule 602			Overruled
149:15-149:19	Rule 802, Rule 602			Overruled
149:21-150:6	Rule 802, Rule 602			Overruled
150:9-150:20	Rule 802, Rule 602			Overruled
150:23-150:24	Rule 802, Rule 602			Overruled
151:2-151:8	Rule 802, Rule 602			Overruled
151:11-151:16	Rule 802, Rule 602			Overruled
151:18-151:21	Rule 802, Rule 602			Overruled
151:23-152:2	Rule 802, Rule 602			Overruled
152:5-152:14	Rule 802, Rule 602			Overruled
152:17-152:18	Rule 802, Rule 602			Overruled
152:21-153:2	Rule 802, Rule 602			Overruled
153:5-153:9	Rule 802, Rule 602			Overruled
153:11-153:16	Rule 802, Rule 602			Overruled
153:20-154:7	Rule 802, Rule 602			Overruled
154:11-154:21	Rule 802, Rule 602			Overruled

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
154:23-155:11	Rule 802, Rule 602			Overruled
156:14-156:21	Rule 802, Rule 602			Overruled
156:25	Rule 802, Rule 602			Overruled
157:2-157:5	Rule 802, Rule 602			Overruled
157:8-157:10	Rule 802, Rule 602			Overruled
157:13-157:18	Rule 802, Rule 602			Overruled
157:21-158:4	Rule 802, Rule 602			Overruled
158:8-158:10	Rule 802, Rule 602			Overruled
159:25-160:12	Attorney colloquy (159:25 – 160:1)			Sustained in part; overruled in part; omit 159:25-160:1 through “strike that” (keep in “Did you expect Dr. Ball to”)
160:15				
162:25-163:11				
163:13–163:22				
163:24-164:11				
164:14-164:19				
164:21-165:2				
165:4-165:11				
165:14				
166:19-167:3				
167:6-167:17				
167:20-168:3				
168:6				
168:8-16				
169:1-9				
169:12-13				
170:9-24				

National Initial Designations	MFI Objections	MFI Counterdesignations	National Counterobjections	Court's Ruling
286:4-286:12				
286:15- 286:21				
286:23-287:8	Rule 802, Rule 602			Overruled
287:22- 287:24				
288:1-288:5	Rule 602, Lack of foundation			Overruled
290:20- 290:22				
290:24- 290:25				
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Entered this 30th day of May, 2012.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge